

EAST PALESTINE VILLAGE COUNCIL APRIL 8, 2013 COMMUNITY CENTER 7PM

Mayor Zuch called the meeting to order. Present were Atty. Beagle, Mr. Cohen, Mr. Elzer, Mr. Figley, Mr. Tyger and Mrs. Wisser. The minutes from the March 25 meeting were approved on a motion by Mr. Figley, seconded by Mr. Cohen. In reference to the monthly reports, Mrs. Wisser asked how much it was to rent the community center for the day, Clerk Misti Martin stated it is \$300 total, but \$100 is the refundable deposit. Mrs. Wisser then asked where the odd numbers are coming from on the Park Revenue Report. Martin stated the line dance classes pay a 50/50 split, whatever they make they pay 50% to the Village for the rental. In reference to the water report, Mr. Elzer stated he would like to see how much water is being treated. The March monthly department reports were approved on a motion by Mr. Elzer seconded by Mrs. Wisser. There were no agenda items. Mayor Zuch stated the May meeting in May is scheduled for May 27 which is Memorial Day, and needs to be changed. Mr. Elzer made a motion to reschedule the meeting to Tuesday May 28 at 7pm, seconded by Mr. Cohen. All in favor. There was no Mayors report.

MANAGER: Village Manager Monteleone stated he is still working on the Sumner St. bridge project, Dominion is moving gas lines and they are hoping to begin work next week. He met with Columbiana County Engineers this week and they have the plan quantities done for the chip & seal program. It will take approximately 250 tons and should be done by mid July. The advertising has begun for road paving; the bid opening will be April 202 at 1pm. He stated that Lisa Hamner was there tonight and wanted to thank CSI for all of their help. The spring clean up was a great success, and this project wouldn't have been possible without them. They did a great job and the Village was proud to be a part of it. Ms. Hamner said they picked up 56.6 tons of garbage, 393 TV's, and 364 tires. 5 new 18 to 20 ft autumn blaze trees have been ordered to replace some that have been cut down at the park. He is working with Chief Dickey on recruiting more part time police officers. He also requested the Utility Committee schedule a meeting in the next couple weeks to discuss street lights, and EQ tanks the interviews are ongoing for the spring positions. Pool power washing will begin April 15. The street department has been out repairing street signs downtown, and plan on painting curbs and markings earlier this year.

LAW DIRECTOR: Atty. Shirley Smith stated that the clerk has issued the notices for the Ortenzio public hearing, the Village has property across the street therefore council should designate either her or the Manager to appear on behalf of the Village. She stated that any zoning approved would have to be for the health safety and welfare, just like anything else. Mr. Elzer made a motion that Village Manager Monteleone be the representative for the Village, seconded by Mr. Cohen. Mr. Cohen asked if this would be for the receipt of all notices and Atty. Smith stated she wasn't suggesting that, she just needed to know that someone would be there. Mr. Cohen stated that everyone is aware of his objections to the re zoning issue, after doing research this isn't a question of whether council can vote on it, it's clearly improper under the law, there is legislation in front of council asking them to do something that the Supreme Court of Ohio says they can't do. He stated that Dr. Ortenzio is planning to retire and the property would be more marketable if it was re zoned, that is the only reason given for the request and the basis on which the Planning Commission approved it. The Supreme Court of Ohio says that's not proper, you can't make a zoning change for that reason. Mr. Figley asked if Atty. Smith agreed with that. She said she would put it in a broader context. She stated the legislation was created because there had been a request and Planning Commission meeting and the Charter indicates that council has a reading before it goes to Planning Commission for review. There is case law about spot zoning; the burden is on the land owner to show it does have a purpose; a rational relationship to the general health, welfare of the community much like anything is passed on. It goes to them because they are responsible for the general plan. A zoning change needs to be in furtherance of the general plan that the PC is responsible for. The dilemma is that the PC believes that it meets the general criteria, so something has to be done for it and burden is on the land owner to prove that it is not just for his sole purpose. There is an exception under the law for a hardship that based on what she has been told; this doesn't qualify for a hardship. Mr. Cohen said he had the PC report and it said that Dr. Ortenzio is planning for retirement and feels the property would be more marketable as B-1, and that is the only reason that has ever been given. There was never an intent given for the property, usually with a zoning request there is intent to use given for the property so the PC has a basis for evaluation. In this situation the request falls short under Ohio law, and in essence he asking council to buy a "pig in a poke" which means he is going to sell the property, but he doesn't know to whom and for what but he wants it approved anyway. Mr. Cohen said that Chairman of PC, John Turner continually refers to the Rite Aid building. Mr. Cohen said that is his point that the request came from Rite Aid. Mr. Figley asked how PC members were appointed. Mr. Cohen said some are Mayor appointments and some are Manager appointments. Mr. Cohen stated he is biased because he doesn't want this re zoned to B 1 but additionally because of Ohio law this couldn't be passed

even if they wanted to. Atty. Smith said if it was passed it would be subject to strong review. Atty. Smith stated the appointments are made by the Mayor with council's approval. Mr. Elzer stated that zoning is a nightmare here, there are residences in commercial and industrial areas and if what Mr. Cohen is saying is correct and this is backwards, could we go to Dr. Ortenzio and say if he finds someone to buy it that council can then look at it? Atty. Smith said there is nothing to preclude them from doing that. Mr. Figley said that is not council's job. Atty. Smith stated that if Mr. Elzer was asking if it was tabled, could it be revisited, the answer is yes. Mr. Cohen said Dr. Ortenzio always has to option to re visit this, and if it's tabled he can file an appeal with the Zoning Board of Appeals. Atty. Smith stated that if it's not tabled, tonight is only the second reading, and then the public hearing, there may be nothing more to present. Mr. Figley said it is obvious council is not going to approve this change so why go on with it. Mr. Cohen said that is why he wanted to bring up tabling it, that way it would do away with the public hearing and puts the ball back in Dr. Ortenzio's court, it doesn't close his options. Mr. Cohen made a motion to table **Ord. 10-2013**- re zoning for Dr. Ortenzio, seconded by Mr. Figley. Atty. Beagle-Y, Mr. Cohen-Y, Mr. Elzer-N, Mr. Figley-Y, Mr. Tyger-Y and Mrs. Wisser-Y. 5 to 1, **Ord. 10-2013** is tabled.

STREET: Mr. Figley stated he's been receiving complaints on potholes and that he hasn't seen any work being done. We owe it to the people to get cold patch and get some holes filled. Manager Monteleone said the plan is to start this week or next. Mr. Figley asked if we had to wait for the plants to open and Monteleone said no, either way whether it's cold or hot patch it will be this week or next.

SAFETY/PARK/REC/CEM: NO REPORT

DEVELOPMENT: Mr. Elzer stated they had another Street Fair meeting with Bates Amusements. Bates said there are three 60 ft ferris wheels in the country and one of them will be at our fair. It will be at Market and Rebecca; it will be impressive because the buildings there are only 40 ft tall. Bob White from the Dairy Queen has retired and Covelli Enterprises has purchased the building. Bob Whitemore the barber is retiring after 50 years. Karen Janes Bakery has been sold, the people who own Mickie & Minnie's across the street have purchased it and will be changing the menu and hours of operation. The Chamber of Commerce has combined with the Columbiana Chamber for a spring mixer at Covington on April 25 at 5:30. Mr. Cohen asked if Covelli was going to keep it a Dairy Queen and Mr. Elzer said yes.

UTILITY: Mrs. Wisser mentioned the missing light pole in front of the Shamrock. Manager Monteleone said Ohio Edison came out to inspect it and then took it down. Mr. Figley asked if we had a choice on electric service and was told no. Mr. Elzer said many people have been working on the street light problem for month and it is a ludicrous system. The way it stands now, we buy the poles, we pay Ohio Edison to maintain them and if anything happens it's our problem. Manager Monteleone said that they received the contract to put the paw print banners back on the flag poles, the contract mandates a 3rd party that is certified be paid to put them up and take them down, and there is a \$75.00 dollar processing fee and a \$25.00 fee for every pole that gets a banner which comes to about \$1000.00 just in processing fees. It is very discouraging. Mrs. Wisser stated the water in the men's urinals runs 24/7 from April to October. Monteleone said he will check into it. Mr. Elzer said they have asked to be able to paint the light poles, and Monteleone said they have asked about decorative caps to re enforce them.

FINANCE: NO REPORT

At this point Mayor Zuch gave a brief overview of tonight's legislation.

VISITORS: Larry & Sandy Wales, Dot Herbert, Adam Philips, Nancy Reeves, Kip Reeves, John Bosley, Dianna Elzer, Larry & Terri Ward, Pam Figley, Chuck McGuire, Lisa Hamner, Austin Hoffman, Gene Hoffman, Noah Tancer, Matthew Tancer, Katie Schwendeman, John & Bonnie Davis, Emery Coon, Chief Kevin Dickey, Pam Figley Denny Sugar, and Rich Bolan.

LEGISLATION: Atty. Beagle introduced **Ord. 9-2013** and made a motion that it be read by title only, seconded by Mr. Cohen. **An ordinance amending codified ordinance section 248.05 and ordinance 7-2008 as to collection of fees associated with the use of the Park Community Center for all non-profit organizations benefiting the Village of East Palestine.** Mr. Elzer stated when this discussion was started everyone wanted consistent rules, for weeks he argued it should be free for people using it that benefits the community, and last week everyone agreed that DOG Days should use it for free, and Mrs. Wisser pointed out that some people pay based on how many people come. He doesn't see the difference, and he thinks DOG Days should be free along with crime watch and others. Mr. Figley stated he didn't agree that DOG Days should be free; he said that it should be everyone or no one. Atty. Smith stated she has discussed this with the Manager and

if we have an ordinance it has be followed. Mr. Elzer said that Sandy Wales said last week that taking \$200.00 to pay for the community center is \$200.00 less they can use at the park, and he agrees but that goes for everyone. This isn't about the money. The volunteers should feel like we are working with them not against them. Mr. Figley said when he votes no it will be because there is no way to separate the organizations. Mr. Elzer said it wouldn't be difficult, when the Chamber put \$2000.00 into a meet and greet when Pete came to town, they had to pay to use the community center. The Village shouldn't be making money on it, they should be supporting it. The Chamber puts in \$500.00 a year for meetings to bring in new businesses, paying the Village to bring in new business is counterproductive. There are many events that don't take place here and it sits empty 99% of the time. Mr. Figley asked what was being voted on, whether everyone pays or are we voting on who doesn't pay. Mr. Elzer said we are voting on who does not pay. Atty. Smith said there is an ordinance that says you pay already in effect. Mr. Elzer said the new ordinance says there are groups in the community who would not have to pay and Mr. Figley said we don't know who those groups are. Mr. Elzer said he gave everyone a list. Mr. Figley asked if we are voting on the list and Atty. Smith said the list came after, that they are voting on legislation only. Mrs. Wisser said she doesn't think the non-profits will abuse this and Mr. Figley said it doesn't matter what we think, it's what we are voting on. Mr. Elzer said these people are taking time away from work and family to donate to the community. Mr. Figley said there is a lot of merit in what Mr. Elzer is saying but it would be a can of worms. Mr. Elzer said it already is a can of worms, some people pay some don't. Mrs. Wisser said some pay half price, and Mr. Figley said that's what is trying to be corrected. During the day thru the week its non profit and free. Mr. Elzer said that doesn't even apply because dance lessons aren't nonprofit. Mayor Zuch stated the guys that play cards there don't pay and Mr. Elzer said that is making their point. Mayor Zuch said it's through the week and Mrs. Wisser said they are not nonprofit. Dianna Elzer asked if it would make sense to have the non-profits present specific events to council and then vote on them. Mayor Zuch said she has heard mentioned many times that if we are going to give away the community center then we don't need money. Gene Hoffman said there are hundreds of people coming to volunteer for DOG Days and they will be charged to eat here. Mr. Elzer and Mrs. Wisser said they don't want them to pay. Mr. Figley asked how many people have volunteered to pay for DOG Day, and Manager Monteleone said that since this has come up, he has had someone volunteer to pay for DOG Days. Mr. Figley said the issue is bigger than DOG Days; it has to be one way or the other. Atty. Smith stated there is a 50/50 split on dance classes in the ordinance. Mr. Elzer said we make more money by bringing people in to see what we have than we do by charging them, if one business moves here from one of the Chambers events we are further ahead. Atty. Beagle called for a vote on **ord. 9-2013**. Atty. Beagle-N, Mr. Elzer-Y, Mr.Figley-N, Mr. Cohen-N, Mr.Tyger-N, Mrs. Wisser-Y. 4 to 2, **ord. 9-2013 voted down**. Atty. Beagle introduced **Ord. 11-2013** for a third reading and made a motion that it be read by title only, seconded by Mr. Cohen. **An ordinance vacating the remaining portions of an un named alley running between Market Street and Oak Street and directing the clerk to notify the Auditor of Columbiana County of the vacation of said alley.** Atty. Beagle made a motion to suspend the rules and declare an emergency, seconded by Mr. Elzer. Atty. Beagle-Y, Mr. Elzer-Y, Mr. Figley-Y, Mr. Cohen-N, Mr. Tyger-Y, Mrs. Wisser-Y. 5 Yes/1 No to pass. Atty. Beagle called for a vote on **Ord. 11-2013**. Atty. Beagle-Y, Mr. Elzer-Y, Mr. Figley-Y, Mr. Cohen, Mr. Tyger, Mrs. Wisser-Y. 6 YES to pass. Atty. Beagle introduced **Ord. 13-2013** for a second reading. **An ordinance repealing East Palestine Municipal Codified Ordinance No. 3-2012; " An ordinance consenting to the annexation of the 9.312 acres known as the "Brittain Motors Annexation", and declaring an emergency."** Atty. Beagle introduced **Ord. 14-2013** for a second reading and made a motion that it be read by title only, seconded by Mr. Elzer. **An ordinance repealing East Palestine Municipal ordinance No. 4-2012; " an ordinance regarding municipal services to be rendered to the 9.312 acres known as the " Brittain Motors Annexation", and declaring an emergency."**

ADJOURN: Mr. Elzer made a motion to adjourn, seconded by Mr. Cohen. All in favor, meeting adjourned.

MAYOR MARGO ZUCH

MISTI J. MARTIN-CLERK